tion, with the bill of lading showing the transfer point as the origin of the shipment. In all instances the for-hire carrier deals directly with the shipper and the ultimate destination of the goods shipped is known to the shipper at the time the goods begin their journey.

In addition to all-motor movements, examples are described in which freight moves across State boundaries in private transportation by water, followed by distribution within a single State by a for-hire motor carrier. We are asked to direct our conclusions herein to such operations as well as those specifically covered by the order instituting this proceeding. Inasmuch as our order of May 21, 1962, referred to all-motor operations only, we shall confine our conclusions to the situation in which motor carriage alone is involved.

Position of the Parties

The representations submitted in this proceeding are almost equally divided between those that support the view that the for-hire portion of the transportation under consideration is subject to full economic regulation under part II of the act; and those that reach the opposite view. However, two participants, Hess and the American Retail Federation, find no conflict in interpretative decisions affecting operating rights and rate matters arising under part II of the act. More particularly, all of the motor common carrier participants, except Hess, Central Motor Lines, and South Paterson Trucking; both railroad parties; Cowan; the Joint Northeastern Motor Carriers; the National Motor Freight Assn.; and the ATA favor the "interstate" view; i.e., that the for-hire one-State motor operation is subject to full economic regulation by this Commission, while South Paterson and Central Motor Lines, all of the State commissions, NARUC, the manufacturers, and, with the exception of the American Retail Federation, the manufacturer associations and private motor carrier associations take the "intrastate" position.

The American Retail Federation urges that, pursuant to section 204(a)(4a) of the act, we determine that the for-hire operations involved are not of such nature as to impair the uniform regulation of transportation subject to our jurisdiction, and that we issue a general certificate of exemption therefor.

Essentially, the arguments of those who oppose economic regulation by this Commission of the invloved for-hire transportation are: (1) that the applicable judicial precedents do not allow the inclusion of the private carrier portion of the interstate movement as part of the total movement to be considered in determining if the economic provisions of part II of the act apply to the for-hire portion of the movement; in other words, that for this purpose there is no "continuous" movement between a private and for-hire carrier, and that transportation, for the purpose of determining its inter- or intrastate character, exists only when merchandise is in the hands of a for-hire carrier; (2) that a contrary conclusion would be impractical and unduly burdensome on single-State for-hire carriers as they would have no way of knowing whether a shipment tendered to them by a private carrier actually originated at a point in another State; and (3) that the Congress did not intend a broad or implied construction of the act on issues involving Federal as opposed to State jurisdiction.

The arguments supporting a finding that the involved for-hire transportation is within our jurisdiction are: (1) that part II of the act is applicable to both private and for-hire carriers, and the private movement should be joined with a for-hire movement when ascertaining whether or not a shipment is in interstate commerce subject to regulation under part II; (2) that, in view of the absence in some States of effective regulatory action over motor intrastate transportation of property, the economic regulation by us of the for-hire transportation in issue

here will serve to strengthen the motor carrier industry generally; and (3) that, under accepted precedents concerned with the interstate versus intrastate nature of commerce, the for-hire portion of the involved movements are in interstate commerce, beyond the jurisdiction of the States; and should we find that such for-hire service is not within the regulatory purview of the Interstate Commerce Act, there would be created thereby, to the detriment of all concerned, a regulatory void.

HISTORIAL BACKGROUND

Generally, the type of problem before us exemplified by the decision of the Supreme Court in *Pennsylvania R. Co.* v. *Ohio Public Utilities Comm.*, 298 U.S. 170 (1936), hereinafter called the *Pennsylvania* case. In that case, a coal producer used its own barges and tugs to transport its own coal from a mine in Pennsylvania to another Pennsylvania point, thence over its own rail right-of-way to a plant of the producer at an Ohio point where the coal was washed, broken, assorted, and "for the first time it is ready to fill specific orders." The coal thereafter was loaded on a common carrier railroad for delivery to points in Ohio. The controversy which arose from the foregoing factual situation was whether certain interstate charges on file with us under what is now part I of the act should apply to a portion of the coal movement by common carrier railroad within Ohio. The Court, in reaching the conclusion that such transportation was not within our jurisdiction for the purpose of prescribing rates, stated, as follows (citations omitted):

> Appellants say that from the moment the coal left the mines in Pennsylvania there was a continuing intention to deliver it to consumers in another state, whether their identity at the beginning was known or unknown, and that a movement impelled by that intention is interstate commerce which Congress has the power to regulate at any stage of the ensuing

transit. * * * But there is confusion of thought in such a statement of the problem. Not all commerce is transportation, and not all transportation is by common carriers by rail. The question for us here is not whether the movement of the coal is to be classified as commerce or even as commerce between states. The question is whether it is that particular form of interstate commerce which Congress has subjected to regulation in respect of rates by a federal commission. The Interstate Commerce Act * * * is aimed at common carriers exclusively, § 1(1), (3), and not even at all these. * * * For many purposes, as for example in testing the validity of state taxation, merchandise is deemed to be in interstate commerce when it has started on its journey, though still in the possession of consignor or seller. * * * Not so, however, in determining the application of this act. Transportation begins for that purpose, if not for others, when the merchandise has been placed in the possession of a carrier. * * * And "wherever the word 'carrier' is used in this chapter it shall be held to mean 'common carrier.'" § 1(3). * * * Appellants would have us hold that this interstate transportation by an owner who does not carry for any one else will be tacked to the intrastate transportation by railroads who are in business as common carriers, and the movement thus consolidated brought within the statute. The statute and the decisions as we read them forbid this unifying process.

* * * *

Neither in the cases cited by the appellants nor in any others known to us has transportation by a common carrier been combined with carriage by an owner for the purpose of subjecting the whole to the operation of the statute when the parts would be exempt. Such a fusion, if permitted, would lead to strange results. The situation laid before us would not be changed in its essentials if a cooperative association of farmers doing business in Pennsylvania close to the state line were to use a fleet of trucks

belonging to the association or its members to carry milk or vegetables from Pennsylvania to a railroad station in Ohio. Even though this were done systematically and not casually or in sporadic instances, the ensuing transportation by rail, if kept within Ohio, would not be transportation between the states within the meaning of the Act of Congress. If the concept of transportation is in need of expansion, it is for the legislative department of the government to determine how great the change shall be.

We have found it unnecessary to consider in the disposition of the case whether the treatment of the coal at * * * [the plant] would break the continuity of the movement from the mines, even if interstate transportation would otherwise exist.

Subsequent to the *Pennsylvania* decision, a series of reports involving not rate matters but operating rights found, in effect, that part II of the act differed from part I with respect to the transportation that could be viewed in establishing, for purposes of economic regulation, the interstate character of a for-hire motor movement within a single State, the movement being preceded or followed by a private movement across the State line. In *Bisceglia Contract Carrier Application*, 34 M.C.C. 233, former division 5 stated:

The provisions of part II of the act apply to "the transportation of passengers or property by motor carriers engaged in interstate or foreign commerce." Section 202(a). For the purposes of part II, the term "interstate commerce" includes—

"commerce between any place in a State and any place in another State or between places in the same State through another State, whether such commerce moves wholly by motor vehicle, or partly by motor vehicle and partly by rail, express, or *water*. [Section 203(a) (10).] [Emphasis supplied.]"

In the instant proceeding, the water carrier does not carry for anyone else, and unless the transporta-

tion performed by it may be tacked to that performed by motor vehicle, the transportation is not interstate in character within the meaning of part II of the act. Section 203(a)(10) does not expressly state that, in order to be so unified, both parts of the interstate movement must be performed by carriers operating for hire; nor, in our opinion, is that interpretation required by necessary implication * * *.

We are not unmindful of the decision of the Supreme Court in *Pennsylvania R. Co.* v. *Public Utilities Comm. of Ohio*, 298 U. S. 170. That decision, however, involved part I of the act. The Court expressly stated that the question there in issue was not whether the movement was interstate in character but, rather, whether it was "that particular form of interstate commerce which Congress has subjected to regulation" under part I of the act. It was pointed out that part I "is aimed at common carriers exclusively," and that, because both parts of the movement there examined were not performed by common carriers, the transportation wholly within Ohio by the rail common carriers there involved did not come within the purview of part I.

The *Bisceglia* decision was followed in *Dora Motor Carrier Operations Within Arizona*, 48 M.C.C. 171; *Eldon Miller, Inc., Extension—Illinois*, 63 M.C.C. 313; and *Hafner and Hanson Common Carrier Application*, 69 M.C.C. 581. Compare, also, *Roethlisberger Transfer Co. Ext.—Frankenmuth, Mich.*, 32 M.C.C. 709, in which a similar result was reached without reference to the *Pennsylvania* case.

At the same time that these reports found a combination private and for-hire movement to be "interstate" and the for-hire portion subject to economic regulation, division 2, in a series of reports, adhered to the view that single-State motor transportation of the type here involved was not subject to rate regulation. In *Service Transp. Co. Contracts and Agreements*, 44 M.C.C. 419,

two motor private carriers, one of which originated traffic at Philadelphia, Pa., and the other at Trenton, N.J., tendered freight to Service, a regulated for-hire carrier, at Secaucus, N. J., a point within the New York, N. Y., commercial zone, for delivery by Service at other points within the New York, N. Y., commercial zone. The question raised was whether the transportation by Service was subject to the full regulatory jurisdiction of the Commission, or partially exempt from regulation under section 203(b)(8), which exempts from economic regulation transportation which, although it is in interstate or foreign commerce, is of a distinctly local nature, "except when such transportation is under a common control, management, or arrangement for a continuous carriage or shipment * * *." In concluding that the transportation performed by Service came within the exemption of section 203(b)(8) and was not subject to economic regulation under part II, division 2 stated:

> A careful reading of the pertinent provisions of the act reveals that part II applies to the "transportation" of passengers or property by motor carriers, engaged in interstate or foreign commerce, and that the term "motor carrier" includes private carriers of property by motor vehicle in the administration of only certain specifically designated sections of part II * * *. In view of the clear restriction of our jurisdiction over private carriers to matters of safety of operation and in the face of the longstanding interpretation of the phrase "under common control, management, or arrangement for a continuous carriage or shipment" as not embracing arrangements made by the shipper separately with two or more carriers acting independently, we are persuaded that the act does not contemplate the inclusion of a purely private carriage as part of the continuous carriage covered by that phrase.
>
> * * * * *

> While the situation [In the Pennsylvania case], so far as the character of the transportation was concerned, was very similar to that involved here, there are differences both in fact and in the applicable provisions of law, which might possibly be interpreted as taking this matter outside the purview of that decision of the court. Nevertheless, we are persuaded that, in the absence of a clearer evidence of a contrary Congressional intent, we should follow the doctrine of that case that a transportation by common carrier may not be "combined with carriage by an owner for the purpose of subjecting the whole to the operation of the statute when the parts would be exempt."

In *Iron and Steel Articles, Central Territory*, 53 M.C.C. 769, an investigation covering the lawfulness of certain proposed motor rates, division 2 followed the reasoning applied in the *Service* report; and, in *W. J. Holliday & Co., Inc.* v. *Liberty Trucking Co.*, 53 M.C.C. 22, a rate proceeding involving similar issues, it concluded that, in essence, since the term "motor carrier" does not include private carriers for purposes of rate and tariff matters, the Commission's limited jurisdiction over private carriers (for purposes of safety of operations) does not bring the for-hire service conducted wholly within a single State within the purview of the act "for the purpose of subjecting the whole to the operation of the statute when the parts would be exempt."

Thus, the decisions of divisions of this Commission arising under part II of the act may be summarized as requiring operating authority for the for-hire single-State portion of a motor movement that has originated in another State and has crossed or will cross a State line in private motor carriage, while, at the same time finding to be inapplicable an interstate motor tariff covering the single-State for-hire part of an identical movement.

Discussion and Conclusions

The representations filed by the parties indicate that our decision here is a matter of concern to significant segments of the shipping public and the motor carrier industry. It is argued, for example, that intrastate rates are generally lower than interstate rates for similar movements conducted under an interstate tariff. Or it is contended that, under the view that the involved for-hire transportation is intrastate, many shippers, who might use the services of regulated interstate motor carriers from plant site to destination, are encouraged to transport their own goods to a point just within the boundaries of the State to which their goods are destined for the purpose of avoiding interstate regulation.

In many situations involving questions of interstate versus intrastate commerce, the governing tests are clear. For example, it has long been established that for-hire motor transportation by one carrier within the confines of a single State, when preceded or followed for-hire transportation by another carrier across a State line, may be transportation in interstate commerce subject to economic regulation under part II of the act. *Rush Common Carrier Application*, 17 M.C.C. 661. Generally, whether transportation within a single State, is, in fact, interstate is determined by the essential character of the commerce, the most important factor of which is the presence or absence of a fixed and persisting intent of the shipper that his goods move to a destination in another State. *Baltimore & O. S. W. R. Co.* v. *Settle*, 260 U. S. 166.

Certain of the participants argue that we need only apply to the situation presented here the tests established in the *Settle* case in order to determine that the "essential character" of the commerce is interstate. Others argue that, since the term "interstate commerce" contained in section 202(a) is defined in section 203(a)(10) as "commerce * * * wholly by motor vehicle" between States, the

for-hire transportation here involved is subject to economic regulation under part II because it is a part of "commerce" which has moved wholly by motor vehicle. Solutions such as these, however, assume that the essentially interstate character of the overall commerce will alone determine the scope of transportation regulation, and we do not think that such an assumption is proper. The *Pennsylvania* case made it clear that not all commerce is transportation; that transportation begins only when merchandise has been placed in the possession of a carrier subject to economic regulation; and that a shipper is not a carrier subject to economic regulation under the provisions of what is now part I of the act. The fundamental principles of the *Pennsylvania* case are not altered in dealing with part II instead of part I. For although part II extends to proprietary operations for the purposes of regulating safety of operations and hours of service, it does not consider shippers to be subject to the act for the purposes of economic regulation. Thus under part II, just as under part I, the transportation must be considered as beginning at the point where the shipper tenders his goods to a for-hire carrier. If delivery is then made at a point in the same State, the relevant transportation is not interstate transportation.

Although the instituting order herein states that the purpose of this proceeding is to determine if the involved for-hire transportation is in interstate commerce subject to the Interstate Commerce Act, or if it is intrastate, we wish to emphasize that we have answered the first proposition in the negative and the second in the affirmative only in respect of economic regulation. It should be noted, however, that even though we think that the *Pennsylvania* decision does not permit the combination of for-hire transportation wholly within a single State with carriage by an owner across a State line for the purpose of subjecting the former to Federal economic regulation, there may in fact be situations where Congress has in-

tended that the otherwise separate private interstate movement and the for-hire intrastate movement be combined in order to establish Federal jurisdiction over the whole for purposes unrelated to economic regulation. For example, compare *Walling* v. *Material Wholesale Food & Supply Co.*, 141 F. 2d 331, 337, 340 and *Feinman* v. *Philip Fleisher, Inc.*, 51 N.Y.S. 2d 31, which held to be subject to our jurisdiction under part II certain matters relative to the employment of drivers of private motor carriers operating within a single State in the transportation of traffic moving to or from such State in motor common carriage.

We agree with the results of the *Service* case, *supra*, and the decisions of division 2 cited herein. To the extent that the cited decisions of division 1 and former division 5 are inconsistent with the conclusions reached herein, they are overruled.

FINDINGS

We find (1) that for-hire motor transportation, within the confines of a single State, of property which has moved from, or will move to, points beyond the same State in private motor carriage, is, so far as the for-hire transportation is concerned, not in interstate commerce subject to economic regulation under part II of the Interstate Commerce Act, and (2) that the conclusions and findings in *Hafner and Hanson Common Carrier Application*, 69 M.C.C. 581; *Eldon Miller, Inc., Extension—Illinois*, 63 M.C.C. 313; *Dora Motor Carrier Operations Within Arizona*, 48 M.C.C. 171; *Bisceglia Contract Carrier Application*, 34 M.C.C. 233; and *Roethlishberger Transfer Co. Ext.—Frankenmuth, Mich.*, 32 M.C.C. 709, and other cases of similar import, to the extent that they are inconsistent with the discussion contained herein should be, and they are hereby, overruled.

An order will be entered discontinuing the proceeding.

COMMISSIONER FREAS, whom COMMISSIONERS HUTCHINSON, HERRING, and BUSH join, dissenting:

The decision of the Supreme Court in *Pennsylvania Railroad Co.* v. *Ohio Public Utilities Commission*, 298 U. S. 170 (1936), upon which the majority relies, was based upon a jurisdictional question strictly within the confines of sections 1(1)(a) and (2)(a) of part I, of the act, whereas here we are confronted with a jurisdictional question within the purview of section 202(a) and (b) of part II. In the *Pennsylvania* case, the Court expressly stated that the issue was not whether the movement was interstate in character but rather whether it was "that particular form of interstate commerce which Congress has subjected to regulation" under part I, which is "aimed at common carriers exclusively." The Court reasoned that since both parts of the movement there examined were not performed by common carriers, that performed by the rail common carrier did not come within the purview of part I. No question was presented in the *Pennsylvania* case respecting economic regulation under part II.

Part II contains no restrictive grant of jurisdiction over common carriers as does part I, but rather the jurisdiction conferred by section 202(a) of part II is over "the transportation of passengers or property by motor carriers engaged in interstate or foreign commerce." Section 203(a)(10) defines "interstate commerce" as "commerce between any place in a State and any place in another State or between places in the same State through another State, whether such commerce moves wholly by motor vehicle or partly by motor vehicle and partly by rail, express, or water; * * *." And the term "motor vehicle" is defined by section 203(a)(13) as "any vehicle * * * propelled or drawn by mechanical power and used upon the highways in transportation of passengers or property * * *."

Although our part II jurisdiction over private carriers is limited to matters involving safety of operation and

hours of service, the operations of private carriers are, nevertheless, subject to the same definition of interstate commerce as are the operations of common and contract carriers. This is obviously true since the section 203(a)(17) definition of a private carrier specifies that such carrier must be one which operates in interstate or foreign commerce; and there is only one definition of interstate commerce contained in part II, namely that in section 203(a)(10). It is plain, therefore, that the test under part II is whether the essential character of the commerce concerned is interstate. In my opinion, it is.

The Commission's decision in *Service Transp. Co. Contracts and Agreements*, 44 M.C.C. 419, also relied on strongly by the majority, is distinguishable from the situation presented herein because in that case a purely local service was involved and thus the for-hire carrier was entitled to the exemption of section 203(b)(8).

Clearly, section 216 of the act and related sections dealing with rates and tariffs apply only to common carriers. While the statute does not provide for the publication or collection of through rates or charges covering a single arrangement between carriers other than common carriers, the collection of interstate rates by a common carrier covering its portion alone of a continuous interstate movement initiated or terminated by a private motor carrier obviously is mandatory. It is my opinion that to the extent the cited decisions of division 2 imply or require a contrary result, they should be overruled.

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 2nd day of March A. D. 1964.

No. MC-C-3626

MOTOR TRANSPORTATION OF PROPERTY WITHIN A SINGLE STATE

Investigation of the matters and things involved in this proceeding having been made, and the Commission, on the date hereof, having made and filed a report herein containing its findings of fact and conclusions thereon, which report is hereby made a part hereof:

It is ordered, That this proceeding be, and it is hereby discontinued.

By the Commission.

HAROLD D. McCOY
Secretary.

(SEAL)

APPENDIX D

SERVICE DATE
AUGUST 18, 1964

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 5th day of August, A. D. 1964.

No. MC-C-3626

MOTOR TRANSPORTATION OF PROPERTY WITHIN A SINGLE STATE

Upon consideration of the record in the above-entitled proceeding, and of:

(1) Joint petition of Morgan Drive-away, Inc., and National Trailer Convoy, Inc., filed April 15, 1964, for reconsideration;

(2) Petition of National Motor Freight Traffic Association, Inc., filed April 16, 1964, for reconsideration;

(3) Petition of American Trucking Associations, Inc., filed April 16, 1964, for reconsideration;

(4) Petition of The Pennsylvania Railroad Company, filed April 16, 1964, for reconsideration;

(5) Reply by Bethlehem Steel Company, filed May 4, 1964, to petitions in (1) through (4) above;

(6) Reply by South Paterson Trucking Company, Inc., filed May 5, 1964, to petitions in (1) through (4) above;

(7) Reply by American Retail Federation, filed May 6, 1964, to petitions in (1) through (4) above;

(8) Reply by North Carolina Utilities Commission, filed May 6, 1964, to petitions in (1) through (4) above;

(9) Reply by The National Industrial Traffic League, filed May 6, 1964, to petitions in (1) through (4) above;

(10) Reply by The Private Carrier Conference of the American Trucking Associations, Inc., filed May 6, 1964, to petitions in (1) through (4) above;

(11) Reply by Private Truck Council of America, Inc., filed May 6, 1964, to petitions in (1) through (4) above;

(12) Reply by National Association of Railroad and Utilities Commissioners, filed May 6, 1964, to petitions in (1) through (4) above;

and good cause appearing therefor:

It is ordered, That the said petitions be, and they are hereby, denied, for the reason that the findings of the Commission, in its report of March 2, 1964, are in accordance with the evidence and the applicable law.

By the Commission.

HAROLD D. MCCOY,
Secretary.

(SEAL)

APPENDIX E

THE INTERSTATE COMMERCE ACT

NATIONAL TRANSPORTATION POLICY

[*September 18, 1940.*] [*49 U.S.C., preceding §§ 1, 301, 901, and 1001.*] It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.

Part I

Title 49.—Chapter 1, U. S. Code

REGULATION IN GENERAL; CAR SERVICE; ALTERATION OF LINE

SEC. 1. [*As amended June 29, 1906, April 13, 1908, June 18, 1910, May 29, 1917, August 10, 1917, February 28, 1920, June 19, 1934, August 9, 1935, September 18,*

1940, June 24, 1948, August 2, 1949, August 12, 1958.] [*49 U.S.C. § 1.*]

(1) That the provisions of this part shall apply to common carriers engaged in—

(a) The transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment;

* * * *

—from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States through a foreign country to any other place in the United States, or from or to any place in the United States to or from a foreign country, but only in so far as such transportation takes place within the United States.

(2) The provisions of this part shall also apply to such transportation of passengers and property, but only in so far as such transportation takes place within the United States, but shall not apply—

(a) To the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State and not shipped to or from a foreign country from or to any place in the United States as aforesaid, except as otherwise provided in this part;

* * * *

PART II

Title 49.—Chapter 8, U. S. Code

APPLICATION OF PROVISIONS

SEC. 202. [*August 9, 1935, amended September 18, 1940, May 16, 1942.*] [*49 U. S. C. § 302.*] (a) The provisions of this part apply to the transportation of passengers or property by motor carriers engaged in interstate or foreign commerce and to the procurement of and the provision of facilities for such transportation, and the regulation of such transportation, and of the procurement thereof, and the provision of facilities therefor, is hereby vested in the Interstate Commerce Commission.

(b) Nothing in this part shall be construed to affect the powers of taxation of the several States or to authorize a motor carrier to do an intrastate business on the highways of any State, or to interfere with the exclusive exercise by each State of the power of regulation of intrastate commerce by motor carriers on the highways thereof.

(c) Notwithstanding any provision of this section or of section 203, the provisions of this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation and equipment, shall not apply—

(1) to transportation by motor vehicle by a carrier by railroad subject to part I, or by a water carrier subject to part III, or by a freight forwarder subject to part IV, incidental to transportation or service subject to such parts, in the performance within terminal areas of transfer, collection, or delivery services; but such transportation shall be considered to be and shall be regulated as transportation subject to part I when performed by such carrier by railroad, as transportation subject to part III when performed by such water carrier, and as trans-

portation or service subject to part IV when performed by such freight forwarder;

* * * * *

DEFINITIONS

SEC. 203. [*August 9, 1935, amended June 23, 1938, June 29, 1938, September 18, 1940, September 1, 1950, July 9, 1952, July 22, 1954, August 3, 1956, August 22, 1957, August 12, 1958.*] [*49 U. S. C. § 303.*] (a) As used in this part—

* * * * *

(10) The term "interstate commerce" means commerce between any place in a State and any place in another State or between places in the same State through another State, whether such commerce moves wholly by motor vehicle or partly by motor vehicle and partly by rail, express, or water.

* * * * *

(13) The term "motor vehicle" means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof determined by the Commission, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails, or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service.

(14) The term "common carrier by motor vehicle" means any person which holds itself out to the general public to engage in the transportation by motor vehicle in interstate or foreign commerce of passengers or property or any class or classes thereof for compensation, whether over regular or irregular routes, except transportation by motor vehicle by an express company to the

extent that such transportation has heretofore been subject to part I, to which extent such transportation shall continue to be considered to be and shall be regulated as transportation subject to part I.

(15) The term "contract carrier by motor vehicle" means any person which engages in transportation by motor vehicle of passengers or property in interstate or foreign commerce, for compensation (other than transportation referred to in paragraph (14) and the exception thereto), under continuing contracts with one person or a limited number of persons either (a) for the furnishing of transportation services through the assignment of motor vehicles for a continuing period of time to the exclusive use of each person served or (b) for the furnishing of transportation services designed to meet the distinct need of each individual customer.

* * * *

(b) Nothing in this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include (1) motor vehicles employed solely in transporting school children and teachers to or from school; or (2) taxicabs, or other motor vehicles performing a bona fide taxicab service, having a capacity of not more than six passengers and not operated on a regular route or between fixed termini; or (3) motor vehicles owned or operated by or on behalf of hotels and used exclusively for the transportation of hotel patrons between hotels and local railroad or other common carrier stations; or (4) motor vehicles operated, under authorization, regulation, and control of the Secretary of the Interior, principally for the purpose of transporting persons in and about the national parks and national monuments; or (4a) motor vehicles controlled and operated by any farmer when used in the transportation of his agricultural (including horticultural) commodities and prod-

ucts thereof, or in the transportation of supplies to his farm; or (5) motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended, or by a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined; or (6) motor vehicles used in carrying property consisting of ordinary livestock, fish (including shell fish), or agricultural (including horticultural) commodities (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation: *Provided*, That the words "property consisting of ordinary livestock, fish (including shell fish), or agricultural (including horticultural) commodities (not including manufactured products thereof)" as used herein shall include property shown as "Exempt" in the "Commodity List" incorporated in ruling numbered 107, March 19, 1958, Bureau of Motor Carriers, Interstate Commerce Commission, but shall not include property shown therein as "Not exempt": *Provided further, however*, That notwithstanding the preceding proviso the words "property consisting of ordinary livestock, fish (including shell fish), or agricultural (including horticultural) commodities (not including manufactured products thereof)" shall not be deemed to include frozen fruits, frozen berries, frozen vegetables, cocoa beans, coffee beans, tea, bananas, or hemp, and wool imported from any foreign country, wool tops and noils, or wool waste (carded, spun, woven, or knitted), and shall be deemed to include cooked or uncooked (including breaded) fish or sheel fish when frozen or fresh (but not including fish and shell fish which have been treated for preserving, such as canned, smoked, pickled, spiced, corned or kippered products); or (7) motor vehicles used exclusively in the distribution of newspapers; or (7a) the transportation of persons or property by motor vehicle when inci-

dental to transportation by aircraft nor, unless and to the extent that the Commission shall from time to time find that such application is necessary to carry out the national transportation policy declared in this Act, shall the provisions of this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment apply to: (8) the transportation of passengers or property in interstate or foreign commerce wholly within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities, except when such transportation is under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such municipality, municipalities, or zone, and provided that the motor carrier engaged in such transportation of passengers over regular or irregular route or routes in interstate commerce is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each State having jurisdiction; or (9) the casual, occasional, or reciprocal transportation of passengers or property by motor vehicle in interstate or foreign commerce for compensation by any person not engaged in transportation by motor vehicle as a regular occupation or business, unless, in the case of transportation of passengers, such transportation is sold or offered for sale, or provided or procured or furnished or arranged for, by a broker, or by any other person who sells or offers for sale transportation furnished by a person lawfully engaged in the transportation of passengers by motor vehicle under a certificate or permit issued under this part or under a pending application for such a certificate or permit; or (10) the emergency transportation of any accidentally wrecked or disabled motor vehicle in interstate or foreign commerce by towing.

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GENERAL DUTIES AND POWERS OF THE COMMISSION

SEC. 204. [*August 9, 1935, amended June 29, 1938, September 18, 1940, March 27, 1942, August 3, 1956.*] [*49 U. S. C. § 304.*] (a) It shall be the duty of the Commission—

(1) To regulate common carriers by motor vehicle as provided in this part, and to that end the Commission may establish reasonable requirements with respect to continuous and adequate service, transportation of baggage and express, uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.

(2) To regulate contract carries by motor vehicle as provided in this part, and to that end the Commission may establish reasonable requirements with respect to uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.

(3) To establish for private carriers of property by motor vehicle, if need therefor is found, reasonable requirements to promote safety of operation, and to that end prescribe qualifications and maximum hours of service of employees, and standards of equipment. In the event such requirements are established, the term "motor carrier" shall be construed to include private carriers of property by motor vehicle in the administration of sections 204(c); 205; 220; 221; 222(a), (b), (d), (f), and (g); and 224.

* * * *

(4a) To determine, upon its own motion, or upon application by a motor carrier, a State board, or any other party in interest, whether the transportation in

interstate or foreign commerce performed by any motor carrier or class of motor carriers lawfully engaged in operation solely within a single State is in fact of such nature, character, or quantity as not substantially to affect or impair uniform regulation by the Commission of transportation by motor carriers engaged in interstate or foreign commerce in effectuating the national transportation policy declared in this Act. Upon so finding, the Commission shall issue a certificate of exemption to such motor carrier or class of motor carriers which, during the period such certificate shall remain effective and unrevoked, shall exempt such carrier or class of motor carriers from compliance with the provisions of this part, and shall attach to such certificate such reasonable terms and conditions as the public interest may require. At any time after the issuance of any such certificate of exemption, the Commission may by order revoke all or any part thereof, if it shall find that the transportation in interstate or foreign commerce performed by the carrier or class of carriers designated in such certificate shall be, or shall have become, or is reasonably likely to become, of such nature, character, or quantity as in fact substantially to affect or impair uniform regulation by the Commission of interstate or foreign transportation by motor carriers in effectuating the national transportation policy declared in this Act. Upon revocation of any such certificate, the Commission shall restore to the carrier or carriers affected thereby, without further preceedings, the authority, if any, to operate in interstate or foreign commerce held by such carrier or carriers at the time the certificate of exemption pertaining to such carrier or carriers became effective. No certificate of exemption shall be denied, and no order of revocation shall be issued, under this subparagraph, except after reasonable opportunity for hearing to interested parties. Where an application is made in good faith for the exemption of a motor carrier

under this subparagraph, accompanied by a certificate of a State board of the State in which the operations of such carrier are carried on stating that in the opinion of such board such carrier is entitled to a certificate of exemption under this subparagraph, such carrier shall be exempt from the provisions of this part beginning with the sixtieth day following the making of such application to the Commission unless prior to such time the Commission shall have by order denied such application, and such exemption shall be effective until such time as the Commission, after such sixtieth day, may by order deny such application or may by order revoke all or any part thereof as hereinbefore authorized. In any case where a motor carrier has become exempt from the provisions of this part as provided in this subparagraph, it shall not be considered to be a burden on interstate or foreign commerce for a State to regulate such carrier with respect to the operations covered by such exemption. Applications under this subparagraph shall be made in writing to the Commission, verified under oath, and shall be in such form and contain such information as the Commission shall by regulations require.

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APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

SEC. 206. [*August 9, 1935, amended June 29, 1938, September 18, 1940, September 1, 1950.*] [*49 U. S. C. § 306.*] (a) (1) Except as otherwise provided in this section and in section 210a, no common carrier by motor vehicle subject to the provisions of this part shall engage in any interstate or foreign operation on any public highway, or within any reservation under the exclusive jurisdiction of the United States, unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the Commission authorizing such

operations: *Provided, however*, That, subject to section 210, if any such carrier or predecessor in interest was in bona fide operation as a common carrier by motor vehicle on June 1, 1935, over the route or routes or within the territory for which application is made and has so operated since that time, or if engaged in furnishing seasonal service only, was in bona fide operation on June 1, 1935, during the season ordinarily covered by its operation and has so operated since that time, except in either instance as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission as provided in paragraph (b) of this section and within one hundred and twenty days after this section shall take effect, and if such carrier was registered on June 1, 1935, under any code of fair competition requiring registration, the fact of registration shall be evidence of bona fide operation to be considered in connection with the issuance of such certificate. Otherwise the application for such certificate shall be decided in accordance with the procedure provided for in section 207 (a) of this part and such certificate shall be issued or denied accordingly. Pending the determination of any such application the continuance of such operation shall be lawful:

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RATES, FARES, AND CHARGES OF COMMON CARRIERS BY MOTOR VEHICLE

SEC. 216. [*August 9, 1935, as amended June 29, 1938, and September 18, 1940.*] [*49 U. S. C. § 316.*]

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(b) It shall be the duty of every common carrier of property by motor vehicle to provide safe and adequate

service, equipment, and facilities for the transportation of property in interstate or foreign commerce; to establish, observe, and enforce just and reasonable rates, charges, and classifications, and just and reasonable regulations and practices relating thereto and to the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, and all other matters relating to or connected with the transportation of property in interstate or foreign commerce.

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TARIFFS OF COMMON CARRIERS BY MOTOR VEHICLE

SEC. 217. [*August 9, 1935, amended September 18, 1940.*] [*49 U. S. C. § 317.*] (a) Every common carrier by motor vehicle shall file with the Commission, and print, and keep open to public inspection, tariffs showing all the rates, fares, and charges for transportation, and all services in connection therewith, of passengers or property in interstate or foreign commerce between points on its own route and between points on its own route and points on the route of any other such carrier, or on the route of any common carrier by railroad and/or express and/or water, when a through route and joint rate shall have been established. Such rates, fares, and charges shall be stated in terms of lawful money of the United States. The tariffs required by this section shall be published, filed, and posted in such form and manner, and shall contain such information, as the Commission by regulations shall prescribe; and the Commission is authorized to reject any tariff filed with it which is not in consonance with this section and with such regulations. Any tariff so rejected by the Commission shall be void and its use shall be unlawful.

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SCHEDULES OF CONTRACT CARRIERS BY MOTOR VEHICLE

SEC. 218. [*August 9, 1935, amended June 29, 1938, September 18, 1940, August 13, 1957.*] [*49 U. S. C. § 318.*] (a) It shall be the duty of every contract carrier by motor vehicle to establish and observe reasonable minimum rates and charges for any service rendered or to be rendered in the transportation of passengers or property or in connection therewith and to establish and observe reasonable regulations and practices to be applied in connection with said reasonable minimum rates, fares, and charges. It shall be the duty of every contract carrier by motor vehicle to file with the Commission, publish, and keep open for public inspection, in the form and manner prescribed by the Commission, schedules containing the actual rates or charges of such carrier for the transportation of passengers or property in interstate or foreign commerce, and any rule, regulation, or practice affecting such rates or charges and the value of the service thereunder: *Provided*, That any contract carrier serving but one shipper having rendered continuous service to such shipper for not less than one year may file reasonable minimum rates and charges unless the Commission in any individual case, after hearing, finds it in the public interest to require the filing of actual rates and charges. No such contract carrier, unless otherwise provided by this part, shall engage in the transportation of passengers or property in interstate or foreign commerce unless the actual rates or charges for such transportation by said carrier have been published, filed, and posted in accordance with the provisions of this part. Nothing herein provided shall be so construed as to require such carriers to maintain the same rates, rules and regulations for the same services for all shippers served. No reduction shall be made in any such charge either directly or by means of any change in any rule, regulation, or prac-

tice affecting such charge or the value of the service thereunder, nor shall any new charge be established, except after thirty days' notice of the proposed change or new charge filed in the aforesaid form and manner; but the Commission may, in its discretion and for good cause shown, allow such change upon less notice, or modify the requirements of this paragraph with respect to posting and filing of such schedules, either in particular instances, or by general order applicable to special or peculiar circumstances or conditions. Such notice shall plainly state the change proposed to be made and the time when such change will take effect. No such carrier shall demand, charge, or collect compensation for such transportation different from the charges filed in accordance with this paragraph, as affected by any rule, regulation, or practice so filed, or less than the minimum rate or charge as may be prescribed by the Commission from time to time, and it shall be unlawful for any such carrier, by the furnishing of special services, facilities, or privileges, or by any other device whatsoever, to charge, accept, or receive compensation different from the actual rates and charges so filed, or less than the minimum charges so prescribed: *Provided*, That any such carrier or carriers, or any class or group thereof, may apply to the Commission for relief from the provisions of this paragraph, and the Commission may, after hearing, grant such relief to such extent and for such time, and in such manner as in its judgment is consistent with the public interest and the national transportation policy declared in this Act.